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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WILLIAM L HARRIS ,

7 Plaintiff,

8 v.

9 CITY OF KENT et al.,

10 Defendants.

Case No. 2:20-cv-01045-TLF

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

11 This matter comes before the Court on plaintiff's motions to amend (Dkt, 43, 63),
12 plaintiff's second motion for summary judgment (Dkt. 45), defendants Thormburg and
13 JLL Property Management's motion for summary judgment (Dkt. 46) and defendants
14 Officer Reed and City of Kent's cross-motion for summary judgment (Dkt. 55). The
15 parties have fully briefed the issues before the Court. Dkt. 43, 45-51, 53-55, 57-63. For
16 the reasons set forth below, the Court GRANTS plaintiff's motions to amend (Dkt. 43,
17 63), DENIES plaintiff's motion for summary judgment (Dkt. 45), GRANTS defendants
18 Thormburg and JLL Property Management's motion for summary judgment (Dkt. 46)
19 and GRANTS in part and DENIES in part defendants Officer Reed and City of Kent's
20 cross-motion for summary judgment (Dkt. 55).

21 PROCEDURAL BACKGROUND

22 Plaintiff filed a motion for leave to amend seeking to file a third amended
23 complaint. Dkt. 43. While this motion was pending, plaintiff filed his second motion for
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1 summary judgment. Dkt. 45. The named defendants in this action also filed motions for
2 summary judgment. Dkt. 46, 55. After the parties briefed the pending motions for
3 summary judgment, plaintiff filed a fourth motion to amend the complaint. Dkt. 63.

4 Plaintiff's Fourth Amended Complaint is factually identical to plaintiff's Third
5 Amended complaint. The only changes are: plaintiff's Fourth Amended Complaint adds
6 as defendants Tom Clark and Jason Nixon, based on the same facts alleged in the
7 Third Amended Complaint; the Fourth Amended Complaint adds a claim for negligence
8 based on the same facts. Dkt. 43, 63.

9 Pursuant to Fed. R. Civ. P. 15(a), the Court grants plaintiff's latest motion to
10 amend and proceeds with plaintiff's Fourth Amended Complaint as the operative
11 complaint. In light of the parties' briefing and to prevent prejudice to defendants, the
12 Court will consider the merits of the pending motions for summary judgment as applied
13 to the facts alleged in the Fourth Amended Complaint. An amended pleading operates
14 as a complete substitute of the original complaint. *See Ferdik v. Bonzelet*, 963 F.2d
15 1258, 1262 (9th Cir. 1992). Accordingly, the Court will only consider factual allegations
16 raised in the Fourth Amended Complaint. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474
17 (9th Cir. 1997), *overruled in part on other grounds*, *Lacey v. Maricopa Cnty.*, 693 F.3d
18 896 (9th Cir. 2012).

19 FACTUAL BACKGROUND

20 Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for alleged violations of
21 his constitutionally protected rights.

22 The Fourth Amended Complaint alleges the Kent Police Department is aware
23 that a number of police officers have been intentionally violating people's rights and has
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1 failed to take action or institute appropriate training. Dkt. 63 at 13-14. The complaint
2 also states that other officers and supervisors failed to intervene while Officer Reed
3 allegedly violated plaintiff's rights. *Id.* at 13.

4 Plaintiff alleges that on December 15, 2019 Officers Jacob Reed and Jason
5 Nixon arrested him for having an electrical cord running from his vehicle to an electrical
6 outlet, for failing to exit his vehicle quickly enough and for tampering with a light pole.
7 Dkt. 63 at 16. Plaintiff alleges that the officers used tactical hand control techniques to
8 forcibly remove plaintiff from his vehicle and placed severely tight hand cuffs on plaintiff
9 causing excruciating pain. *Id.* Plaintiff also claims that his request to speak to Officer
10 Reed's supervisor was denied. *Id.* Additionally, plaintiff alleges that Sergeant Clark
11 approved of the arrest. *Id.* at 17.

12 The complaint alleges that defendant Thornburg knew that plaintiff was not
13 stealing electricity because the light post has "dawn to dusk, cost-saving, kill switch
14 technology." Dkt. 63 at 15. Plaintiff also contends that defendant Thornburg sought to
15 cover his conduct by sending vendors to remove the outlet after plaintiff's arrest. *Id.*

16 A. Video Recording

17 During the events underlying this litigation, Officers Reed and Nixon were
18 wearing body-worn cameras. Dkt. 16, 17, 49.

19 The footage from Officer Reed's body camera begins while Officer Reed was still
20 in his patrol vehicle, before he approached plaintiff's parked vehicle. Officer Reed's
21 Body-Worn Camera Footage; Dkt. 47-2 at 00:08. The footage shows Officer Reed
22 approached plaintiff's vehicle with a flashlight and attempted to look into the vehicle. *Id.*
23 at 00:39-00:52. Officer Reed then knocked on the back-passenger side window. *Id.* at
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1 00:52-01:03. After knocking, Officer Reed took a step away from the vehicle and put on
2 a pair of gloves. *Id.* at 01:00-01:16.

3 After waiting about twenty seconds, Officer Reed knocked on the window again
4 and stated “Let’s go open the door man. I can’t see what you’re doing and you’re
5 freaking me out, so open the door.” Dkt. 47-2 at 01:16-01:23. Officer Reed waited
6 approximately ten seconds before stating “Okay stop digging around or I’m going to
7 break the window and pull you out.” Dkt. 47-2 at 01:23-01:39. From inside the vehicle,
8 plaintiff appeared to say, “I’m getting my shorts.” *Id.* at 01:38-01:39. Officer Reed stated
9 “I can’t hear you. Open the door.” *Id.* at 01:39-01:43. Plaintiff continued to speak, but it
10 is unclear what plaintiff said. *Id.* at 01:43-01:45.

11 Next, Officer Reed said, “You have three second before I break this window.”
12 Dkt. 47-2 at 01:45-01:49. Plaintiff continued to state that he was just getting his shorts.
13 *Id.* at 01:45-01:50. Officer Reed counted one and waited five seconds before counting
14 two. *Id.* 01:48-01:55. During this time, plaintiff responded, “I’m getting my shorts” and
15 “Come one man I’m a former police officer myself, can’t I just get my shorts on.” *Id.* at
16 01:54-02:03. Officer Reed responded “No, open the door now.” *Id.* at 02:03.

17 Plaintiff opened the door and repeated “I’m just getting my shorts man.” Dkt. 47-2
18 at 02:03-02:08. Once plaintiff opened the door, it appears that he was sitting in his
19 vehicle covered with a blanket from the waist down. *Id.* at 02:08. Officer Reed instructed
20 plaintiff to get out of the vehicle. *Id.* at 02:11. Plaintiff responded, “But I’ve got nothing
21 on.” *Id.* at 02:11. Officer Reed told plaintiff “Step out or I’m going to drag you out” and
22 counted one. *Id.* at 02:11-02:13. Plaintiff stated, “I’m a former police officer myself, all
23 I’m putting on is some shorts officer, can I get some dignity and put my shorts on.” *Id.* at
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1 02:13-02:19. At this point Officer Reed informed plaintiff that he was being audio and
2 video recorded. *Id* at 02:19.

3 Plaintiff reiterated that he would like to put his shorts on. Dkt. 47-2 at 02:25.
4 Officer Reed asked plaintiff where his shorts were located, and plaintiff indicated that
5 they were in the back of the car under the blanket. *Id.* at 02:22-02:25. Officer Reed
6 declined plaintiff's request, stating "you are not digging for anything inside this car" and
7 instructed plaintiff to exit the vehicle. Dkt. 47-2 at 02:25-02:30. Officer Reed told plaintiff
8 that plaintiff was impeding Officer Reed's investigation and that he would arrest plaintiff
9 for obstruction if plaintiff did not exit the vehicle. *Id.* at 02:30-02:38.

10 Plaintiff sat up on the edge of the seat facing out of the vehicle, holding the
11 blanket that was covering his legs, stating that he is a former police officer and that he
12 just wanted to put his shorts on. Dkt. 47-2 at 02:38-02:43. Officer Reed grabbed
13 plaintiff's right wrist and shoulder to guide him out of the vehicle and instructed plaintiff
14 to put his hands behind his back. *Id.* at 02:43-02:50. Once plaintiff was standing, Officer
15 Reed stood behind him holding plaintiff's wrists and instructed plaintiff to drop the items
16 in his hands. *Id.* at 02:50-03:00. Plaintiff said that he was just trying to put his shorts on,
17 that he had been parked there for months without a problem and that he wasn't doing
18 anything wrong. *Id.* 03:00-03:20. Officer Reed explained that plaintiff was impeding his
19 investigation and directed plaintiff to interlace his fingers. *Id.* at 03:00-03:20.

20 Officer Reed asked Officer Nixon to assist him in placing hand cuffs on plaintiff's
21 wrists. Dkt. 47-2 at 03:27-03:33. Officer Nixon helped hold plaintiff's hands while Officer
22 Reed applied the handcuffs. *Id.* While the officers were handcuffing plaintiff, he asked
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1 why he was being arrested, and Officer Reed informed plaintiff that he was being
2 arrested for obstructing Officer Reed's investigation. *Id.* at 03:33-03:42.

3 After the officers secured the handcuff's on plaintiff, while he was still standing
4 next to the vehicle, Officer Reed informed plaintiff that Officer Nixon would grab
5 plaintiff's shorts from the vehicle. *Id.* at 03:55-03:57. Plaintiff told Officer Nixon where he
6 could find his shorts, Officer Nixon grabbed plaintiff's shorts and assisted him in putting
7 on the shorts while still handcuffed. *Id.* at 03:57-4:40. Once plaintiff's shorts were on,
8 Officer Reed walked plaintiff to Officer Reed's patrol vehicle, asked plaintiff to sit in the
9 vehicle and read plaintiff his Miranda Rights from a booklet. *Id.* at 4:40-5:40. While
10 Officer Reed read from his booklet, plaintiff requested that a police sergeant come to
11 the scene. *Id.* at 05:32. Officer Reed did not respond to plaintiff's request.

12 After reading from the booklet, Officer Reed explained to plaintiff that he
13 observed electrical cords running from a light pole to plaintiff's vehicle which constituted
14 theft of services. Dkt. 47-2 at 05:42-05:48. Plaintiff responded that if there was an issue
15 with the power cords, he would take care of it. *Id.* at 05:48-05:55. Officer Reed recorded
16 plaintiff's contact information and informed him that he was being arrested for
17 obstruction. *Id.* at 05:55-6:58. Officer Reed informed plaintiff that he could request to
18 speak to a sergeant in jail and closed the door to the patrol car. *Id.* at 06:52-07:00. The
19 officers then checked the camper trailer and another vehicle parked near plaintiff's
20 vehicle, but found no occupants in the vehicles. *Id.* at 07:05-11:15.

21 While still at the scene of the arrest, Officer Reed received a phone call. Dkt. 47-
22 2 at 11:55. Officer Reed answered and stated "Yeah, perfect, perfect, so you are
23 responsible for the shopping center up here? Do you mind if I put you on speaker phone
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1 and record you?" *Id.* at 11:55-12:15. Officer Reed then put the phone on speaker and
2 had the following conversation:

3 Officer Reed: Um so, now that I've got you on speaker phone, I just
4 wanted to let you know you are being audio and video recorded even
5 though it's just on the phone. So, you guys are responsible for the whole
6 property complex up here?

7 Caller: Yes

8 Officer Reed: Okay, so we have a camper trailer and a car parked next to
9 the camper trailer that is plugged into one your guys' streetlights, like the
10 parking lot lights and they are stealing electricity.

11 Caller: Okay

12 Officer Reed: And we were just wondering ... I've got one of them
13 detained in the back of my patrol car and I was just wondering if you
14 wanted to prosecute for theft.

15 Caller: Yes

16 Officer Reed: Okay, um also, so he is going to go to jail because he wasn't
17 very happy with the police asking him questions in the first place, so as
18 long as you are willing to prosecute, I will get your information. I can't tow
19 his car however; it's just going to stay here. I'll unplug the thing if I can do
20 it safely, but it's going to be your guys' responsibility to get it moved if you
21 need it moved.

22 Caller: Yeah, we'll get it towed. I'll get ahold of my day porter.

23 Officer Reed: Okay just so you can tell him too, there's also like a 20-foot
24 camper trailer here that's plugged into the same power pole.

25 Caller: That's unrelated to the party that you are detaining?

Officer Reed: Correct yup

Caller: Alright

Dkt. 47-2 at 12:35-13:58. Next, Officer Reed wrote the callers contact information. Dkt.
47-2 at 13:58-15:30. The caller identified himself as Curt Thormburg, the property
manager for JLL Property Management. *Id.*

1 When Officer Reed returned to his patrol vehicle, he removed his body worn
2 camera and placed it on the ceiling of the vehicle so that he and plaintiff would be on
3 screen during the drive to the jail. Dkt. 47-2 at 29:41-30:05. While Officer Reed was
4 writing on a notepad in the patrol vehicle, plaintiff requested to speak to the sergeant,
5 watch commander, the division commander and chief of police. *Id.* at 37:14-37:20.
6 Officer Reed placed a call informing the recipient of the call that plaintiff was requesting
7 to speak to a sergeant. *Id.* at 39:20-39:40. Officer Reed informed plaintiff that Officer
8 Reed's sergeant declined to speak with plaintiff. *Id.* at 39:40-39:48. During the drive to
9 the jail, plaintiff requested that Officer Reed release plaintiff's handcuffs because they
10 were uncomfortable and cutting into his arm, Officer Reed informed plaintiff that he
11 could sit sideways or place his hands in the cutouts. *Id.* at 40:02-47:09. Plaintiff sat
12 sideways for the rest of the drive but did not make any further comments or requests
13 regarding the handcuffs. *Id.* at 47:09-55:32.

14 DISCUSSION

15 Summary judgment is supported if the materials in the record "show that there is
16 no genuine issue as to any material fact and that the movant is entitled to judgment as a
17 matter of law." Federal Rule of Civil Procedure (FRCP) 56 (a),(c). The moving party
18 bears the initial burden to demonstrate the absence of a genuine dispute of material fact
19 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine dispute
20 concerning a material fact is presented when there is sufficient evidence for a
21 reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby,*
22 *Inc.*, 477 U.S. 242, 252 (1986). In this context, materiality means the fact is one that is
23 "relevant to an element of a claim or defense and whose existence might affect the
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1 outcome of the suit”; thus, materiality is “determined by the substantive law governing
2 the claim.” *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630
3 (9th Cir. 1987).

4 The non-moving party is required to show that genuine issues of material fact
5 “can be resolved only by a finder of fact *because they may reasonably be resolved in*
6 *favor of either party.*” *California Architectural Building Prods., Inc. v. Franciscan*
7 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987) (quoting *Anderson*, 477 U.S. at
8 250) (emphasis in original). When the Court considers a motion for summary judgment,
9 “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to
10 be drawn in [their] favor.” *Anderson*, at 255. Yet the Court is not allowed to perform the
11 jury’s function – the Court may not weigh evidence, draw legitimate inferences from
12 facts, or decide credibility. *Id.* If the moving party meets their initial burden, an adverse
13 party may not rest upon the mere allegations or denials of his pleading; his or her
14 response, by affidavits or as otherwise provided in FRCP 56, must set forth specific
15 facts showing there is a genuine issue for trial. FRCP 56(c). The Court may not
16 disregard evidence solely based on its self-serving nature. *Nigro v. Sears, Roebuck &*
17 *Co.*, 784 F.3d 495, 497 (9th Cir. 2015). “The district court can disregard a self-serving
18 declaration that states only conclusions and not facts that would be admissible
19 evidence.” *Id.*

20 42 U.S.C. § 1983 provides “a ‘civil remedy’ for deprivation of federally protected
21 rights caused by persons acting under color of state law.” *Parratt v. Taylor*, 451 U.S.
22 527, 535 (1981) *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327
23 (1986). To state a claim under Section 1983, a complaint must allege: (1) the conduct
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1 complained of was committed by a person acting under color of state law, and (2) the
2 conduct deprived a person of a right, privilege, or immunity secured by the Constitution
3 or laws of the United States. *Id.* Section 1983 is the appropriate avenue to remedy an
4 alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769
5 F.2d 1350, 1354 (9th Cir. 1985).

6 To state a claim under Section 1983, a plaintiff must set forth the specific factual
7 basis upon which the plaintiff claims each defendant is liable. *Aldabe v. Aldabe*, 616
8 F.2d 1089, 1092 (9th Cir. 1982). Vague and conclusory allegations of officials
9 participating in a civil rights violation are not sufficient to support a claim under Section
10 1983. *Ivey v. Board of Regents*, 673 F.2d 266, 269 (9th Cir. 1982).

11 A government official is entitled to qualified immunity under Section 1983 unless
12 “(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of
13 their conduct was ‘clearly established at the time.’” *District of Columbia v. Wesby*, ____
14 U.S. ____, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howard*, 566 U.S. 658, 664
15 (2012)). A right is “clearly established” when existing precedent places the “statutory or
16 constitutional question beyond debate” such that every reasonable officer would
17 understand that the conduct violated that right. *Reichle*, 566 U.S. at 664.

18 When qualified immunity is reviewed in the context of a defense motion for
19 summary judgment, the evidence must be considered in the light most favorable to the
20 plaintiff with respect to central facts. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per
21 curiam). If there is a genuine issue of material fact concerning both: (1) Whether it
22 would be clear to a reasonable officer that their conduct was unlawful under the
23 circumstances they confronted, and (2) Whether the defendant’s conduct violated a
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1 constitutional right” then summary judgment granting qualified immunity is not
2 appropriate. *Bonivert v. City of Clarkston*, 883 F.3d 865, 871-72 (9th Cir. 2018).

3 A. Fourth Amendment Claims - Unlawful Search and Unlawful Arrest

4 1. Initial Stop

5 The Fourth Amendment right to be secure from unreasonable searches and
6 seizures “applies to all seizures of the person,” including initial and brief seizures falling
7 short of a traditional arrest. *United States v. Berber-Tinoco*, 510 F.3d 1083, 1087 (9th
8 Cir. 2007) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). Such
9 seizures, however, do not violate the Fourth Amendment “if the officer has a reasonable
10 suspicion supported by articulable facts that criminal activity ‘may be afoot.’” *Berber-*
11 *Tinoco*, 510 F.3d at 1087 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

12 To determine whether a seizure was justified by a reasonable suspicion, the
13 Court must “consider whether, in light of the totality of the circumstances, the officer had
14 a particularized and objective basis for suspecting the particular person stopped of
15 criminal activity.” *Id.* (internal quotations omitted). The “totality of the circumstances”
16 may include an officer’s “objective observations, information from police reports, if such
17 are available, and consideration of the modes or patterns of operation of certain kinds of
18 law-breakers.” *Id.*

19 Officer Reed reported that while driving in the Panther Lake Shopping Center he
20 noticed electrical cords running from a light pole to a black SUV and a camper trailer.
21 Declaration of Officer Reed (Reed Decl.), Dkt. 16 at ¶ 6; Case Report, Dkt. 47-1. Officer
22 Reed also stated that the cords appeared to be illegally tapped to the light pole’s power
23 source. Dkt. 16 at ¶ 6; Dkt. 47-1. Officer Reed believed this was a crime and potential
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1 safety hazard. Reed Decl., Dkt. 16 at ¶ 6. The pictures taken at the scene of the incident
2 show that a panel from the light pole had been removed and an outlet had been
3 connected to the internal wiring of the light pole. Dkt. 47-1.

4 Pursuant to RCW 9A.56.050, it is a gross misdemeanor to steal electricity. RCW
5 9A.56.050; See, *State v. Kolisynk*, 49 Wn.App. 890, 894 (1987) (finding that electricity is
6 a service that can be stolen). When Officer Reed observed that someone had tampered
7 with a light pole to remove the access panel and connect an electrical outlet to the
8 internal wiring, Officer Reed had reasonable suspicion that someone was stealing
9 electricity. Additionally, when Officer Reed observed the cords leading from the light
10 pole to a parked vehicle, he had a sufficient particularized and objective basis for
11 believing that the occupant of the vehicle was stealing electricity from the light pole.
12 Based on the undisputed facts in the record, Officer Reed had sufficient reasonable
13 suspicion to conduct a brief investigatory stop of the occupant of the vehicle.
14 Accordingly, no questions of fact remain regarding whether Officer Reed had sufficient
15 reasonable suspicion to conduct an investigatory stop of plaintiff.

16 2. Arrest

17 A claim for unlawful arrest is cognizable under 42 U.S.C. § 1983, as a violation of
18 the Fourth Amendment, only if the arrest was without probable cause or other
19 justification. *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1018 (9th Cir. 2015).
20 Probable cause exists when an officer has reasonably trustworthy information of facts
21 and circumstances that are sufficient to justify a reasonably cautious person's belief that
22 an offense has been or is being committed. *Stoot v. City of Everett*, 582 F.3d 910, 918
23 (2009) (citing *Brinegar v. United States*, 338 U.S. 160, 175-76 (1946)). Probable cause
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1 is an objective standard, dependent upon the reasonable conclusions to be drawn from
2 the facts known to the arresting officer at the time of the arrest. *Devenpeck v. Alford*,
3 543 U.S. 146, 152 (2004). The arresting officer's subjective reason for the arrest or
4 state of mind are irrelevant in determining whether probable cause existed. *Id.* at 153.

5 Plaintiff was arrested for theft in the third degree and obstructing a public officer.
6 Dkt. 47-1; 47-5; 47-6.

7 Pursuant to KCC 9.02.630, a person is guilty of obstructing a public officer if, with
8 knowledge that the person is a public officer, he or she: " ... (2) intentionally hinders or
9 delays a public officer by disobeying an order to stop given by such officer; (3)
10 intentionally refuses to cease an activity or behavior that creates a risk of injury to any
11 person when ordered to do so by a public officer ... " KCC 9.02.630(A).

12 For purposes of this section, a public officer is any individual responsible for
13 enforcing the Kent City Code and empowered to make arrests or issue citations under
14 the code or individuals responsible for enforcing the criminal laws of the state. KCC
15 9.02.630(C).

16 It is undisputed that Officer Reed was acting in his capacity as an officer for the
17 City of Kent Police Department. Accordingly, for purposes of the charge for obstructing
18 a public officer, Officer Reed was a public officer.

19 The video from Officer Reed's body worn camera shows that after approaching
20 plaintiff's vehicle, Officer Reed knocked on the window and took a step away from the
21 vehicle. After waiting about twenty seconds, Officer Reed knocked on the window again,
22 telling plaintiff to open the door. Officer Reed also told plaintiff that Officer Reed was
23 concerned for his safety because he could not see what plaintiff was doing in the
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1 vehicle. Plaintiff did not open the door and Officer Reed instructed plaintiff to stop
2 digging around inside the vehicle. Officer Reed also told plaintiff that he could not see or
3 hear plaintiff through the car windows, again directing plaintiff to open the door.

4 After plaintiff opened the car door, plaintiff continued to argue with Officer Reed.
5 Officer Reed instructed plaintiff to exit the vehicle several times and plaintiff continued to
6 refuse to exit the vehicle. Additionally, plaintiff's hands were obscured by a blanket, and
7 plaintiff refused to comply with Officer Reed's instructions to drop the items in his hands.

8 The video shows that plaintiff was aware that Officer Reed was a police officer
9 because Officer Reed was wearing his police uniform and while still in the vehicle,
10 plaintiff referred to Officer Reed as "officer."

11 The undisputed evidence in the record shows that plaintiff knew Officer Reed
12 was a public officer acting within his official duties. Further, Officer Reed informed
13 plaintiff that Officer Reed was concerned for his safety because plaintiff appeared to be
14 searching for something in his vehicle. Plaintiff ignored Officer Reed's order to stop
15 looking for items in the vehicle and to exit the vehicle. Accordingly, the undisputed
16 evidence in the record shows that Officer Reed had probable cause to arrest plaintiff for
17 obstructing a public official.

18 Based on the foregoing discussion and the undisputed evidence in the record,
19 there remain no genuine issues of material fact regarding plaintiff's search and arrest.
20 The search and arrest in question in this litigation, do not constitute a cognizable claim
21 under 42 U.S.C. § 1983. Accordingly, plaintiff's claims for unlawful search and unlawful
22 arrest are dismissed against all defendants with prejudice.

1 B. Excessive Force

2 Plaintiff's claim for excessive force may continue in this litigation against Officer
3 Reed only. The excessive force claim is dismissed against all other defendants.

4 When an excessive force claim arises in the context of an arrest, the claim is
5 most properly characterized as invoking the protections of the Fourth Amendment.
6 *Graham v. Connor*, 490 U.S. 386, 395 (1989) (citing *Tenn. v. Garner*, 471 U.S. 1, 5
7 (1985)). Determining whether the force used is reasonable under the Fourth
8 Amendment requires "a careful balancing of the nature and quality of the intrusion on
9 the individual's Fourth Amendment interest against the countervailing governmental
10 interest at stake." *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011).

11 There is no "easy-to-apply legal test" for determining whether the amount of force
12 used was reasonable, instead the Court must analyze "the factbound morass of
13 'reasonableness.'" *Scott v. Harris*, 550 U.S. 372, 383 (2007). The ultimate question,
14 regardless of the amount of force used, is whether the use of force and the officer's
15 actions were reasonable under the circumstance presented. *Id.*

16 The United States Supreme Court set out the following factors to consider when
17 evaluating the government interest at stake; (1) the severity of the crime at issue, (2)
18 whether the suspect posed an immediate threat to the safety of the officers or others,
19 and (3) whether the suspect was actively resisting arrest or attempting to evade arrest
20 by flight. *Graham*, 490 U.S. 396-97.

21 The Ninth Circuit has held that tight handcuffing can constitute excessive force,
22 even if the handcuffing is a generally standard and appropriate practice. *Cortezluna v.*
23 *Leon*, 979 F.3d 645, 655 (9th Cir. 2020) (citing *LaLonde v. County of Riverside*, 204
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1 F.3d 947, 960 (9th Cir. 2000)). “The issue of tight handcuffing is usually fact-specific
2 and is likely to turn on the credibility of the witnesses.” *LaLonde*, 204 F.3d at 960.
3 Additionally, while a plaintiff’s injuries can be indicative of the amount of force used,
4 physical injuries are not required to assert a claim for excessive force. *Cortezluna*, 979
5 F.3d at 654 (citing *Felarca v. Birgeneau*, 891 F.3d 809, 817 (9th Cir. 2018)).

6 It is undisputed that Officer Reed handcuffed plaintiff in the course of the arrest.
7 Plaintiff alleges that Officer Reed made the handcuffs so tight that plaintiff suffered
8 bruising and swelling in his fingers and hands. Dkt. 63. The footage from Officer Reed’s
9 body-worn camera shows that plaintiff requested that Officer Reed loosen the handcuffs
10 because they were beginning to cut into his skin. Dkt. 47-2 at 40:02-47:09. Officer Reed
11 informed plaintiff that he could sit sideways or place his hands in the cutouts in the
12 vehicle. *Id.* Officer Reed did not check or adjust the tightness of plaintiff’s handcuffs. *Id.*
13 In support of their motion for summary judgment, Officer Reed and the City of Kent
14 submitted the Declaration of Sergeant Joseph Engman who opines that Officer Reed’s
15 handcuffing techniques complied with standard police training. Dkt. 57.

16 Based on the evidence in the record, there exist a genuine dispute of material
17 fact regarding plaintiff’s excessive force claim related to his handcuffing. The Ninth
18 Circuit has explained that whether tight handcuffing constitutes excessive force is a fact-
19 based determination that is most appropriately left to a jury’s determination. Additionally,
20 the question of whether, based on the totality of the circumstances, Officer Reed used
21 excessive force by applying unreasonably tight handcuffs, will likely turn on the jury’s
22 determination of the creditability of the witnesses. Accordingly, questions of fact remain
23 regarding whether Officer Reed’s conduct violated plaintiff’s rights.

1 Further, it is well established law that applying handcuffs in a manner that is so
2 tight that they unreasonably injure a person's wrist constitutes use of excessive force.
3 *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989); *Palmer v. Sanderson*, 9 F.3d 1433,
4 1436 (9th Cir. 1993); *LaLonde*, 204 F.3d at 960. Any reasonable officer in Officer
5 Reed's position, would know that applying handcuffs in a manner that unreasonably
6 injures a person is unlawful in the circumstances presented. Therefore, if a jury finds
7 that Officer Reed applied handcuffs to plaintiff in a manner that unreasonably injured
8 plaintiff, Officer Reed would not be entitled to qualified immunity.

9 Summary judgment is not appropriate on this claim against Officer Reed.

10 Plaintiff's complaint does not assert facts to show that Officer Reed's allegedly
11 unconstitutional acts or omissions were in compliance with an official custom, policy or
12 that any entity ratified Officer Reed's conduct. Dkt. 63. Accordingly, plaintiff's complaint
13 fails to raise a cognizable claim against the City of Kent. *Monell v. New York City Dept.*
14 *of Social Services*, 436 U.S. 658, 690 (1978).

15 Based on the video footage from Officer Reed's body worn camera, Officer Nixon
16 did not place the handcuffs on plaintiff and was not made aware at any point that the
17 handcuffs were tight. Therefore, because there are no facts presented to support a
18 claim that Officer Nixon personally participated in the alleged violation, he is not the
19 appropriate defendant for this claim. Similarly, there is no evidence that Sergeant Clark
20 participated in plaintiff's handcuffing or was otherwise aware of how tight the handcuffs
21 were. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Accordingly, plaintiff's claims
22 for excessive force against Officer Nixon and Sergeant Clark are dismissed.

1 Finally, plaintiff's excessive force claim is dismissed against defendant's
2 Thormburg and JLL Property Management, because there is no evidence that either of
3 these defendants conspired with or entered into a joint action with Officer Reed to
4 handcuff plaintiff. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 783 (9th Cir. 2001),
5 cert. denied, 534 U.S. 1020 (2001).

6 C. Equal Protection Claims

7 Plaintiff's Equal Protection Claims are dismissed against all parties.

8 The Equal Protection Clause of the Fourteenth Amendment requires that the
9 State treat all similarly situated people equally. *Furnace v. Sullivan*, 705 F.3d 1021,
10 1030 (9th Cir. 2013). To state a claim under Section 1983 for an Equal Protection
11 violation, plaintiff must show that "the defendants acted with an intent or purpose to
12 discriminate against the plaintiff based upon membership in a protected class." *Id.*

13 To prevail on an Equal Protection claim based on selective enforcement, a
14 plaintiff must demonstrate that enforcement had a discriminatory effect and the officers
15 were motivated by a discriminatory purpose. *Rosenbaum v. City & County of San*
16 *Francisco*, 484 F.3d 1142, 1152 (9th Cir. 2007). To establish such discriminatory effect,
17 a plaintiff must show that similarly situated individuals could have been investigated or
18 prosecuted and were not. *Rosenbaum*, 484 F.3d at 1153 (citing *United States v.*
19 *Armstrong*, 517 U.S. 456, 465 (1996)). Discriminatory purpose is established when
20 plaintiff can show that the decision-maker selected or affirmed a particular course of
21 action "at least in part because of, not merely in spite of, its adverse effect upon an
22 identifiable group." *Rosenbaum*, 484 F.3d at 1153 (citing *Wayte v. United States*, 470
23 U.S. 598, 610 (1985)) (internal quotations omitted).

1 Plaintiff has failed to establish that Officer Reed selectively chose to investigate,
2 and arrest plaintiff based on impermissible grounds. Officer Reed reported that he
3 decided to investigate because he saw cords connected to a makeshift power outlet
4 which created a potential hazard. Dkt. 16 at ¶ 6; Dkt. 47-1. The footage from Officer
5 Reed's body-worn camera shows that three vehicles were parked near the outlet and no
6 one could be seen outside or near the vehicles. Dkt. 47-2. The video shows that Officer
7 Reed approached plaintiff's vehicle while Officer Nixon approached another vehicle to
8 check for occupants. Dkt. 47-2. After Officer Reed placed plaintiff in the patrol vehicle,
9 Officer Reed and Officer Nixon went to investigate the camper trailer that was also
10 plugged into the outlet, trying to contact any occupants. *Id.* Officers Reed and Nixon
11 found no occupants in the other vehicles parked near the outlet. *Id.*

12 There is no indication in the footage from body worn camera or any other
13 evidence in the record, that Officer Reed selectively commenced his investigation or
14 decided to arrest plaintiff on impermissible grounds such as race. Additionally, Officers
15 Reed and Nixon did not choose to investigate only plaintiff, they attempted to contact
16 the occupants of the other vehicles as well, but there were no occupants at the time.

17 Officer Reed's conduct does not amount to a discriminatory investigation and
18 arrest in violation of the equal protection clause. Because there is no evidence in the
19 record showing that Officer Reed's decision to investigate and then subsequently arrest
20 plaintiff were based on plaintiff's race, no genuine issues of material fact remain
21 regarding plaintiff's Equal Protection claims.

22 Based on the foregoing discussion, plaintiff's Equal Protection Claims are
23 dismissed with prejudice against all defendants.

1 D. Civil Rights Act of 1964 – Public Accommodations

2 Plaintiff's claim under Title II of the Civil Rights Act of 1964 alleging that the
3 defendant's unlawfully denied plaintiff access to a de facto public accommodation is
4 dismissed with prejudice.

5 Title II of the Civil Rights Act of 1964 states that "[a]ll persons shall be entitled to
6 the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
7 and accommodations of any place of public accommodation, as defined in this section,
8 without discrimination or segregation on the ground of race, color, religion, or national
9 origin." 42 U.S.C. § 2000a(a). In order to secure broad compliance with the Civil Rights
10 Act, private individuals may initiate private litigation seeking injunctive relief to enforce
11 the Act. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401 (1968). However,
12 plaintiffs bringing actions under Title II of the Civil Rights Act of 1964 cannot recover
13 damages as a remedy. *Id.*; *Resurrection Bay Conservation Alliance v. City of Seward*,
14 640 F.3d 1087, 1091 n. 4 (9th Cir. 2011).

15 Plaintiff seeks only monetary damages and is not seeking injunctive relief. Dkt.
16 63. Because the remedy plaintiff seeks is not available under Title II of the Civil Rights
17 Act of 1964, plaintiffs claim pursuant to Title II of the Civil Rights Act of 1964 is
18 dismissed.

19 E. Defamation

20 Plaintiff's claims for defamation against defendants Thormburg and JLL Property
21 Management are dismissed with prejudice. Plaintiff's claims for defamation against all
22 other defendants are dismissed without prejudice and with leave to amend.

1 The district court should liberally construe a pro se litigant's pleading. *Boag v.*
2 *MacDougall*, 454 U.S. 364, 365 (1982); *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir.
3 1987). Plaintiff alleges that Officer Reed and defendant Thornburg committed
4 actionable defamation by allegedly calling plaintiff a thief. Dkt. 63. Plaintiff claims that by
5 bringing his claim he is defending his constitutional rights. Dkt. 63. Accordingly, it
6 appears that plaintiff is alleging a federal defamation claim under Section 1983.

7 To state a cognizable Section 1983 "defamation-plus" claim, a plaintiff must
8 allege an injury to plaintiff's reputation from a defamatory statement, accompanied by
9 an allegation of injury to a recognizable property or liberty interest. *Crowe v. County of*
10 *San Diego*, 608 F.3d 406, 444 (9th Cir. 2010). A plaintiff can meet this standard by
11 alleging (1) "that the injury to reputation was inflicted in connection with a federally
12 protected right" or (2) "that the injury to reputation caused the denial of a federally
13 protected right." *Id.* (citing *Herb Hallman Chevrolet v. Nash-Holmes*, 169 F.3d 636, 645
14 (9th Cir. 1999).

15 1. Claim against Officer Reed and City of Kent

16 Officer Reed and City of Kent's motion for summary judgment argues that
17 plaintiff's defamation claim should be dismissed because plaintiff fails to identify a false
18 statement purportedly made by Officer Reed and City of Kent. Dkt. 55. The motion also
19 alleges that plaintiff fails to satisfy the other elements of a defamation claim. Dkt. 55.

20 Officer Reed and City of Kent's assertion that plaintiff has not produced evidence
21 to satisfy the elements of defamation, by itself, does not meet their burden, as the
22 moving party, to demonstrate that no genuine issues of material fact exists regarding
23 plaintiff's defamation claims.

1 However, plaintiff's complaint fails to state a claim for defamation. Accordingly,
2 the Court on its own motion, pursuant to Fed. R. Civ. P. 12(b)(6), will dismiss plaintiff's
3 defamation claim against Officer Reed and City of Kent with leave to amend. *See, Reed*
4 *v. Lierance*, 863 F.3d 1196, 1207 (9th Cir. 2017). In order to state a claim, Fed. R. Civ.
5 P. 8(a)(2) requires that the complaint include a short and plain statement of the claims
6 showing that the pleader is entitled to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
7 554 (2007) (*citing Conley v. Gibson*, 355 U.S. 41 (1957)). The complaint must include
8 more than bare assertions, labels, or formulaic recitations of the elements of the cause
9 of action. *Twombly*, 550 U.S. at 555-57.

10 Plaintiff alleges that Officer Reed committed actional defamation by labeling him
11 a "thief." Dkt. 63. However, plaintiff fails to identify an allegedly defamatory statement.
12 Additionally, plaintiff fails to allege facts that would plausibly show injury to a federally
13 protected right or the denial of a federally protected right caused by a defamatory
14 statement. Accordingly, plaintiff's defamation claim against Officer Reed and the City of
15 Kent is dismissed without prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

16 2. Claim against JLL Property Management and Defendant Thormburg

17 JLL Property Management and Thormburg argue that plaintiff's defamation claim
18 against them should be dismissed as a matter of law pursuant to RCW 4.24.510. Dkt.
19 46. JLL Property Management and Thormburg also request the Court impose statutory
20 damages and grant reasonable attorney's fees pursuant to RCW 4.24.510. Dkt. 46, 58.

21 RCW 4.24.510 creates a statutory immunity to defamation claims arising from
22 communications to a government agency regarding matters reasonably of concern to
23 that agency. *Leishman v. Ogden Murphy Wallace, PLLC*, 196 Wn.2d 898, 907-08
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1 (2021). Pursuant to RCW 4.24.510, parties prevailing under the statutory immunity are
2 entitled to recover expense and reasonable attorney's fees incurred in establishing the
3 defense, as well as \$10,000 in statutory damages.

4 Based on plaintiff's allegations, it appears that plaintiff is attempting to bring a
5 "defamation-plus" claim pursuant to 42 U.S.C. § 1983. State anti-SLAPP laws do not
6 apply to federal claims; therefore RCW 4.24.510 is not an appropriate ground to dismiss
7 plaintiff's Section 1983 claims. *Martinez v. California*, 444 U.S. 277, 284 (1980) (finding
8 that defendants under 42 U.S.C. § 1983 cannot be immunized by state law); *Hilton v.*
9 *Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010) (finding that state anti-SLAPP
10 statutes do not apply to federal law causes of action).

11 However, plaintiff's Section 1983 defamation claim may be subject to dismissal
12 on other grounds. A plaintiff may only bring a Section 1983 action against a defendant
13 acting under color of state law. *Haygood*, 769 F.2d at 1354. A plaintiff may only bring a
14 Section 1983 action against a private individual if the private individual conspired or
15 entered into a joint action with a state actor. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d
16 772, 783 (9th Cir. 2001), cert. denied, 534 U.S. 1020. To allege a conspiracy, plaintiff
17 must allege facts showing "an agreement or meeting of the minds to violate
18 constitutional rights." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d
19 1539, 1540-41 (9th Cir. 1989) (quotations omitted).

20 Plaintiff does not identify any particular defamatory statement that defendant
21 Thornburg allegedly communicated. Instead, plaintiff alleges that Thornburg and JLL
22 Property Management committed actionable defamation by agreeing to assist in
23 plaintiff's prosecution. Dkt. 63. Plaintiff fails to allege any facts showing that Thornburg
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1 conspired or agreed to defame plaintiff in a manner that would injure plaintiff's
2 constitutionally protected rights. Additionally, based on the footage from Officer Reed's
3 body-worn camera, and the remaining record, no issues of fact remain on this issue,
4 because any allegation that Thormburg conspired to violate plaintiff's federal rights is
5 unsupported by the evidence of record.

6 Based on the foregoing discussion, the Court dismisses plaintiff's defamation
7 claim against defendants Thromburg and JLL Property Management with prejudice.
8 Additionally, because RCW 4.24.510 is inapplicable to plaintiff's claims, the Court
9 denies defendants Thormburg and JLL Property Management's request for attorney's
10 fees and statutory damages.

11 F. Negligence

12 Here plaintiff alleges a state law cause of action for negligence only against
13 Officer Reed and the City of Kent. Dkt. 63. Plaintiff's negligence claim is dismissed
14 without prejudice.

15 Officer Reed and City of Kent have submitted the declaration of Sergeant
16 Engman who opined that Officer Reed's conduct was proper and consistent with
17 standard police practices. Dkt. 57. The Court cannot draw inferences from the facts
18 presented and cannot decide the credibility of witnesses. *Anderson*, 477 U.S. at 255.
19 Sergeant Engman's testimony fails to establish that no genuine disputes of material
20 facts remain in this action.

21 However, because plaintiff's complaint fails to state a cause of action for
22 negligence against any defendant, the Court on its own motion, pursuant to Fed. R. Civ.
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1 P. 12(b)(6), will dismiss plaintiff's negligence claim with leave to amend. *See, Reed v.*
2 *Lierance*, 863 F.3d 1196, 1207 (9th Cir. 2017).

3 To prevail on a negligence claim, a plaintiff must show, (1) the existence of a
4 duty to the plaintiff, (2) a breach of that duty, (3) a resulting injury; and (4) breach of the
5 duty as the proximate cause of the injury. *Mancini v. City of Tacoma*, 196 Wn.2d 864,
6 879 (2021). In order to state a claim, Fed. R. Civ. P. 8(a)(2) requires that the complaint
7 include a short and plain statement of the claims showing that the pleader is entitled to
8 relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007) (*citing Conley v. Gibson*,
9 355 U.S. 41 (1957)). The complaint must include more than bare assertions, labels, or
10 formulaic recitations of the elements of the cause of action. *Twombly*, 550 U.S. at 555-
11 57.

12 Plaintiff's complaint alleges that various defendants acted negligently, without
13 providing plausible assertions of facts indicating whether the defendants owed plaintiff a
14 duty, how they breached such a duty, the injury, and how such breach caused the
15 resulting injury. Dkt. 63. Plaintiff's complaint fails to state a cognizable claim for
16 negligence against any named defendant.

17 Accordingly, plaintiff's claim for negligence is dismissed without prejudice
18 pursuant to Fed. R. Civ. P. 12(b)(6).

19 G. Conspiracy Against Rights

20 Plaintiff's claim for conspiracy against rights pursuant to 18 U.S.C. § 241 fail as a
21 matter of law and is dismissed.

22 Plaintiff alleges a cause of action pursuant to 18 U.S.C. § 241, which is a criminal
23 statute. A private right of action does not exist for all injuries caused by violations of the
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1 criminal code. *Cent. Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164, 190 (1994)
2 (noting that courts have been “quite reluctant to infer a private right of action from a
3 criminal prohibition alone.”). Unless “congressional intent can be inferred from the
4 language of the statute, the statutory structure, or some other source” the Court will not
5 imply a private remedy for the federal statute. *Thompson v. Thompson*, 484 U.S. 174,
6 179 (1988). 18 U.S.C. § 241 does not create a private right of action and does not give
7 rise to civil liability. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006).

8 Based on the foregoing, plaintiff’s claims under 18 U.S.C. § 241 are dismissed
9 with prejudice because the statute does not create a private right of action.

10 H. Plaintiff’s Other Claims

11 Plaintiff also attempts to bring a number of other claims, yet plaintiff lacks the
12 proper standing to raise these claims and therefore they are dismissed with prejudice.

13 Generally, a litigant may only assert their own legal rights and cannot rest a claim
14 for relief on the legal rights or interest of a third party. *Coalitions of Clergy v. Bush*, 310
15 F.3d 1153, 1163 (9th Cir. 2002). However, the United States Supreme Court has
16 recognized an exception to this general rule. *Id.* (citing *Powers v. Ohio*, 499 U.S. 400,
17 410-11 (1991)). Third party standing is proper if the litigant can establish that: (1) the
18 litigant has suffered an injury in fact; (2) the litigant has a close relationship to the third
19 party; and (3) there is some hinderance to the third party asserting their own rights.
20 *Serena v. Mock*, 547 F.3d 1051, 1054 (9th Cir. 2008).

21 Plaintiff alleges that the City of Kent has a history of discrimination and violating
22 people’s rights. Dkt. 63. Plaintiff identifies several incidents involving other unrelated
23 individuals that, plaintiff asserts, exemplify the racial animus the City of Kent has
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1 allowed in the Kent Police Department. Dkt. 63. Plaintiff makes no allegations of any
2 connection to show these cases are related to his causes of action or that he has third
3 party standing to bring these claims. Plaintiff therefore lacks standing.

4 I. Leave to Amend

5 Pursuant to Federal Rule of Civil Procedure 15(a), after an initial period for
6 amendment as of right, pleadings may be amended only with the opposing party's
7 written consent or by leave of the court. Leave to amend should be freely given when
8 justice so requires. Fed. R. Civ. P. 15(a)(2); *Desertrain v. City of Los Angeles*, 754 F.3d
9 1147, 1154 (9th Cir. 2014) (“[T]his policy is to be applied with extreme liberality.”).

10 The Court must consider five factors when determining the propriety for leave to
11 amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment,
12 and whether the plaintiff has previously amended the complaint. *Desertrain*, 754 F.3d at
13 1154; *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

14 There is no evidence indicating that allowing plaintiff to file a final amended
15 complaint will cause undue delay or prejudice to the opposing party. Additionally,
16 plaintiff is proceeding pro se and pro se complaints are to be construed liberally.
17 *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987).

18 “Presumably unskilled in the law, the pro se litigant is far more prone to making
19 errors in pleading than the person who benefits from representation of counsel.” *Noll v.*
20 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). A pro se plaintiff’s pleading is ultimately
21 held “to a less stringent standard than formal pleadings drafted by lawyers.” *Haines v.*
22 *Kerner*, 404 U.S. 519, 520 (1972). These factors favor the Court exercising its discretion
23 to grant plaintiff leave to amend.

1 The Court grants plaintiff leave to amend to correct the deficiencies identified in
2 his state law negligence and Section 1983 federal defamation-plus claims against the
3 City of Kent and Officer Reed. The Court will not grant further leave to amend, unless
4 plaintiff can show good cause and gives sufficient reason justifying leave to amend. If
5 plaintiff chooses to file an amended complaint, it must be legibly written or retyped in its
6 entirety and contain the same case number. Any cause of action alleged in the original
7 complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana,*
8 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds*, *Lacey v.*
9 *Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

10 CONCLUSION

11 Based on the foregoing discussion, plaintiff's motions to amend (Dkt. 43, 63) are
12 GRANTED and plaintiff's Fourth Amended Complaint (Dkt. 63) is the operative
13 complaint. Plaintiff's Second Motion for Summary Judgment (Dkt. 45) is DENIED.
14 Defendants Thornburg and JLL Property Management's Motion for Summary Judgment
15 (Dkt. 46) is GRANTED and the claims against defendants Thornburg and JLL Property
16 are dismissed with prejudice. Defendant's Thornburg and JLL Property Management's
17 request for statutory damages and attorney's fees is DENIED. Defendants Reed and
18 City of Kent's Cross-Motion for Summary Judgment (Dkt. 55) is GRANTED IN PART
19 and DENIED IN PART as set forth below:

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21 • Plaintiff's Fourth Amendment Claim for excessive force during the arrest
22 **may continue** in this litigation.

- 1 • Plaintiff's Fourth Amendment Claims for unlawful search and arrest are
2 **DISMISSED with prejudice;**
- 3 • Plaintiff's Fourteenth Amendment Equal Protection Claims are
4 **DISMISSED with prejudice;**
- 5 • Plaintiff's Civil Rights Act of 1964 – Public Accommodation claims are
6 **DISMISSED with prejudice;**
- 7 • Plaintiff's 18 U.S.C. § 241 claims are **DISMISSED with prejudice;**
- 8 • Plaintiff's claims based upon conduct against other citizens, are
9 **DISMISSED with prejudice;**
- 10 • Plaintiff's Section 1983 federal Defamation-plus and state law Negligence
11 claims against Officer Reed and City of Kent are **DISMISSED without**
12 **prejudice and with leave to amend;** To state a cognizable Section 1983
13 “defamation-plus” claim, a plaintiff must allege an injury to plaintiff's
14 reputation from a defamatory statement, accompanied by an allegation of
15 injury to a recognizable property or liberty interest. *Crowe v. County of*
16 *San Diego*, 608 F.3d 406, 444 (9th Cir. 2010). A plaintiff can meet this
17 standard by alleging (1) “that the injury to reputation was inflicted in
18 connection with a federally protected right” or (2) “that the injury to
19 reputation caused the denial of a federally protected right.” *Id.* (citing *Herb*
20 *Hallman Chevrolet v. Nash-Holmes*, 169 F.3d 636, 645 (9th Cir. 1999).
21 Plaintiff is **granted leave to amend** to correct, if possible, the deficiencies
22 identified in plaintiff's Section 1983 federal defamation-plus and state law
23 negligence claims against Officer Reed and City of Kent.
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- 1 • Plaintiff shall have until **July 30, 2021** to file an amended complaint. If
2 plaintiff chooses not to file an amended complaint, the Court will proceed
3 with plaintiff's Fourth Amended Complaint as the operative complaint.

4 Dated this 9th day of July, 2021.

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8 Theresa L. Fricke
9 United States Magistrate Judge
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